

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

HETRONIC INTERNATIONAL, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-14-650-F
)	
HETRONIC GERMANY GmbH,)	
HYDRONIC-STEUERSYSTEME GmbH,)	
ABI HOLDING GmbH,)	
ABITRON GERMANY GmbH,)	
ABITRON AUSTRIA GmbH, and)	
ALBERT FUCHS,)	
)	
Defendants.)	

VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do,
upon our oaths, find as follows:

Part 1: Plaintiff's Breach of Contract Claims Against Defendant Hetronic
Germany GmbH (Hetronic Germany)

1. On plaintiff's breach of contract claim against defendant
Hetronic Germany concerning sections 1 and 6.2 of the Distribution
Agreement, relating to using parts in Hetronic-branded systems that were
not purchased from plaintiff or which were not approved by plaintiff for
purchase from third-party suppliers, do you find that plaintiff has proven
each essential element of its claim by the greater weight of the evidence?
(Check "Yes" or "No")

Yes ☒

No ☐

IF YOU HAVE ANSWERED "YES" TO THIS QUESTION, YOU MUST
ANSWER QUESTION NO. 2 AND QUESTION NO. 3 FOR DEFENDANT
HETRONIC GERMANY'S AFFIRMATIVE DEFENSES OF WAIVER AND
ACQUIESCENCE.

IF YOU HAVE ANSWERED "NO" TO QUESTION NO. 1, PLEASE
PROCEED TO AND ANSWER QUESTION NO. 4.

2. Having found plaintiff has proven each essential element of its breach of contract claim against defendant Hetronic Germany concerning sections 1 and 6.2 of the Distribution Agreement, relating to using parts in Hetronic-branded systems that were not purchased from plaintiff or which were not approved by plaintiff for purchase from third-party suppliers, do you find that defendant Hetronic Germany has proven its affirmative defense of waiver by the greater weight of the evidence? (Check "Yes" or "No")

Yes _____

No ✓

3. Having found plaintiff has proven each essential element of its breach of contract claim against defendant Hetronic Germany concerning sections 1 and 6.2 of the Distribution Agreement, relating to using parts in Hetronic-branded systems that were not purchased from plaintiff or which were not approved by plaintiff for purchase from third-party suppliers, do you find that defendant Hetronic Germany has proven its affirmative defense of acquiescence by the greater weight of the evidence? (Check "Yes" or "No")

Yes _____

No ✓

IF YOU HAVE ANSWERED "NO" TO BOTH QUESTION NUMBER 2 AND QUESTION NUMBER 3, YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ITS BREACH OF CONTRACT CLAIM AGAINST DEFENDANT HETRONIC GERMANY CONCERNING SECTIONS 1 AND 6.2 OF THE DISTRIBUTION AGREEMENT.

IF YOU HAVE ANSWERED "YES" TO ONE OR BOTH OF QUESTION NUMBERS 2 AND 3, YOU HAVE RENDERED A VERDICT IN FAVOR OF DEFENDANT HETRONIC GERMANY ON THE BREACH OF CONTRACT CLAIM CONCERNING SECTIONS 1 AND 6.2 OF THE DISTRIBUTION AGREEMENT.

PLEASE ANSWER QUESTION NO. 4.

4. On plaintiff's breach of contract claim against defendant Hetronic Germany concerning sections 3.3, 3.4 and/or 7.7 of the Distribution Agreement, relating to competing with plaintiff, soliciting plaintiff's employees, Robert Cassar and Torsten Rempe, to assist efforts to compete with plaintiff and using plaintiff's confidential information to

compete with plaintiff, do you find that plaintiff has proven each essential element of its claim by the greater weight of the evidence? (Check "Yes" or "No")

Yes ☒

No ☐

IF YOU HAVE ANSWERED "YES" TO QUESTION NO. 4, YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ITS BREACH OF CONTRACT CLAIM AGAINST DEFENDANT HETRONIC GERMANY CONCERNING SECTIONS 3.3, 3.4 AND/OR 7.7 OF THE DISTRIBUTION AGREEMENT.

IF YOU HAVE ANSWERED "NO" TO QUESTION NO. 4, YOU HAVE RENDERED A VERDICT IN FAVOR OF DEFENDANT HETRONIC GERMANY ON THE BREACH OF CONTRACT CLAIM CONCERNING SECTIONS 3.3, 3.4 AND/OR 7.7 OF THE DISTRIBUTION AGREEMENT.

IF YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON EITHER OR BOTH OF ITS BREACH OF CONTRACT CLAIMS AGAINST DEFENDANT HETRONIC GERMANY, PLEASE ANSWER QUESTION NO. 5.

5. Having rendered a verdict in favor of plaintiff on either or both of its breach of contract claims against defendant Hetronic Germany, we fix the amount of plaintiff's actual damages in the sum of \$ 4,845,958.00

PLEASE PROCEED TO PART 2.

Part 2: Plaintiff's Breach of Contract Claims Against Defendant Hydronic-Steuersysteme GmbH (HCEE)

1. On plaintiff's breach of contract claim against defendant HCEE concerning sections 1 and 6.2 of the Distribution Agreement, relating to using parts in Hetronic-branded systems that were not purchased from plaintiff or which were not approved by plaintiff for purchase from third-party suppliers, do you find that plaintiff has proven each essential element of its claim by the greater weight of the evidence? (Check "Yes" or "No")

Yes ☒

No ☐

IF YOU HAVE ANSWERED "YES" TO THIS QUESTION, YOU MUST ANSWER QUESTION NO. 2 AND QUESTION NO. 3 FOR DEFENDANT HCEE'S AFFIRMATIVE DEFENSES OF WAIVER AND ACQUIESCENCE.

IF YOU HAVE ANSWERED "NO" TO QUESTION NO. 1, PLEASE PROCEED TO AND ANSWER QUESTION NO. 4.

2. Having found plaintiff has proven each essential element of its breach of contract claim against defendant HCEE concerning sections 1 and 6.2 of the Distribution Agreement, relating to using parts in Hetronic-branded systems that were not purchased from plaintiff or which were not approved by plaintiff for purchase from third-party suppliers, do you find that defendant HCEE has proven its affirmative defense of waiver by the greater weight of the evidence? (Check "Yes" or "No")

Yes _____
No ✓

3. Having found plaintiff has proven each essential element of its breach of contract claim against defendant HCEE concerning sections 1 and 6.2 of the Distribution Agreement, relating to using parts in Hetronic-branded systems that were not purchased from plaintiff or which were not approved by plaintiff for purchase from third-party suppliers, do you find that defendant HCEE has proven its affirmative defense of acquiescence by the greater weight of the evidence? (Check "Yes" or "No")

Yes _____
No ✓

IF YOU HAVE ANSWERED "NO" TO BOTH QUESTION NUMBER 2 AND QUESTION NUMBER 3, YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ITS BREACH OF CONTRACT CLAIM AGAINST DEFENDANT HCEE CONCERNING SECTIONS 1 AND 6.2 OF THE DISTRIBUTION AGREEMENT.

IF YOU HAVE ANSWERED "YES" TO ONE OR BOTH OF QUESTION NUMBERS 2 AND 3, YOU HAVE RENDERED A VERDICT IN FAVOR OF DEFENDANT HCEE ON THE BREACH OF CONTRACT CLAIM CONCERNING SECTIONS 1 AND 6.2 OF THE DISTRIBUTION AGREEMENT.

PLEASE ANSWER QUESTION NO. 4.

4. On plaintiff's breach of contract claim against defendant HCEE concerning sections 3.3, 3.4 and/or 7.7 of the Distribution Agreement, relating to competing with plaintiff, soliciting plaintiff's employees, Robert Cassar and Torsten Rempe, to assist efforts to compete with plaintiff and

using confidential information to compete with plaintiff, do you find that plaintiff has proven each essential element of its claim by the greater weight of the evidence? (Check "Yes" or "No")

Yes ☒

No ☐

IF YOU HAVE ANSWERED "YES" TO QUESTION NO. 4, YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ITS BREACH OF CONTRACT CLAIM AGAINST DEFENDANT HCEE CONCERNING SECTIONS 3.3, 3.4 AND/OR 7.7 OF THE DISTRIBUTION AGREEMENT.

IF YOU HAVE ANSWERED "NO" TO QUESTION NO. 4, YOU HAVE RENDERED A VERDICT IN FAVOR OF DEFENDANT HCEE ON THE BREACH OF CONTRACT CLAIM CONCERNING SECTIONS 3.3, 3.4 AND/OR 7.7 OF THE DISTRIBUTION AGREEMENT.

IF YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON EITHER OR BOTH OF ITS BREACH OF CONTRACT CLAIMS AGAINST DEFENDANT HCEE, PLEASE ANSWER QUESTION NO. 5.

5. Having rendered a verdict in favor of plaintiff on either or both of its breach of contract claims against defendant HCEE, we fix the amount of plaintiff's actual damages in the sum of \$ 1,596,821.00

PLEASE PROCEED TO PART 3.

Part 3: Plaintiff's Trademark Infringement Claims – the HETRONIC® mark, the Product Marks (for ERGO, EURO, GL, GR, HH, MINI, NOVA®, Pocket, TG and RX), and the Trade Dress (overall appearance of plaintiff's product line)

A. Pre-Termination of the Distribution and License Agreements

1. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the HETRONIC® mark against the following defendant or defendants (before plaintiff terminated the distribution and license agreements)? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 2. ONLY ANSWER QUESTION NO. 2 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 1. AFTER YOU HAVE ANSWERED QUESTION NO. 2, PLEASE ANSWER QUESTION NO. 3.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE ANSWER QUESTION NO. 3.

2. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the HETRONIC® mark? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

3. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the Product Marks against the following defendant or defendants (before plaintiff terminated the distribution and license agreements)? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 4. ONLY ANSWER QUESTION NO. 4 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 3. AFTER YOU HAVE ANSWERED QUESTION NO. 4, PLEASE ANSWER QUESTION NO. 5.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE ANSWER QUESTION NO. 5.

4. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the Product Marks? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

5. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the Trade Dress against the following defendant or defendants (before plaintiff terminated the distribution and license agreements)? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 6. ONLY ANSWER QUESTION NO. 6 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 5. AFTER YOU HAVE ANSWERED QUESTION NO. 6, PLEASE PROCEED TO THE INSTRUCTIONS FOR QUESTION NO. 7.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE DO NOT ANSWER QUESTION NO. 6. PLEASE PROCEED TO THE INSTRUCTIONS FOR QUESTION NO. 7.

6. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the Trade Dress? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

Instructions for Question 7.

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT ON QUESTION NO. 1, QUESTION NO. 3, OR QUESTION NO. 5, PLEASE ANSWER QUESTION NO. 7.

IF YOU HAVE ANSWERED "NO" AS TO ALL DEFENDANTS ON QUESTION NO. 1, QUESTION NO. 3, AND QUESTION NO. 5, PLEASE DO NOT ANSWER QUESTION NO. 7. PLEASE PROCEED AND ANSWER QUESTIONS UNDER "B. HOLDOVER PERIOD."

7. Has plaintiff proven by the greater weight of the evidence that it is entitled to any of defendant's profits that are the result of the pre-termination infringement? (Check "Yes" or "No")

Yes ☒

No ☐

IF YOU HAVE ANSWERED "YES" TO QUESTION NO. 7, PLEASE ANSWER QUESTION NO. 8. AFTER YOU HAVE ANSWERED QUESTION NO. 8, PLEASE PROCEED AND ANSWER QUESTIONS UNDER "B. HOLDOVER PERIOD."

8. What is the amount of the defendant's profits you find plaintiff is entitled to for pre-termination infringement?

As to defendant Hetronic Germany \$ 8,366,305.00

As to defendant HCEE \$ 2,608,048.00

NOTE: YOU ARE NOT REQUIRED, IN ANSWERING THIS QUESTION (QUESTION NO. 8), TO ALLOCATE PROFITS FOR ABI AND/OR FUCHS, IF YOU HAVE ANSWERED "YES" AS TO EITHER DEFENDANT IN QUESTION NO. 1, QUESTION NO. 3, OR QUESTION NO. 5.

B. Holdover Period

1. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the HETRONIC®

mark against the following defendant or defendants (after termination on June 6, 2014, and before Abitron Germany and Abitron Austria started doing business on September 1, 2014)? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 2. ONLY ANSWER QUESTION NO. 2 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 1. AFTER YOU HAVE ANSWERED QUESTION NO. 2, PLEASE ANSWER QUESTION NO. 3.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE ANSWER QUESTION NO. 3.

2. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the HETRONIC® mark? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

3. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the Product Marks against the following defendant or defendants (after termination on June 6, 2014, and before Abitron Germany and Abitron Austria started doing business on September 1, 2014)? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No

Albert Fuchs

Yes

No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 4. ONLY ANSWER QUESTION NO. 4 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 3. AFTER YOU HAVE ANSWERED QUESTION NO. 4, PLEASE ANSWER QUESTION NO. 5.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE ANSWER QUESTION NO. 5.

4. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the Product Marks? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

5. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the Trade Dress against the following defendant or defendants (after termination on June 6, 2014, and before Abitron Germany and Abitron Austria started doing business on September 1, 2014)? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 6. ONLY ANSWER QUESTION NO. 6 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 5. AFTER YOU HAVE ANSWERED QUESTION NO. 6, PLEASE PROCEED TO THE INSTRUCTIONS FOR QUESTION NO. 7.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE DO NOT ANSWER QUESTION NO. 6. PLEASE PROCEED TO THE INSTRUCTIONS FOR QUESTION NO. 7.

6. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the Trade Dress? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

Instructions for Question 7.

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT ON QUESTION NO. 1, QUESTION NO. 3, OR QUESTION NO. 5, PLEASE ANSWER QUESTION NO. 7.

IF YOU HAVE ANSWERED "NO" AS TO ALL DEFENDANTS ON QUESTION NO. 1, QUESTION NO. 3, AND QUESTION NO. 5, PLEASE DO NOT ANSWER QUESTION NO. 7. PLEASE PROCEED AND ANSWER QUESTIONS UNDER "C. ABITRON OPERATION."

7. Has plaintiff proven by the greater weight of the evidence that it is entitled to any of defendant's profits that are the result of the infringement after termination on June 6, 2014, and before Abitron Germany and Abitron Austria started doing business on September 1, 2014? (Check "Yes" or "No")

Yes

✓

No

IF YOU HAVE ANSWERED "YES" TO QUESTION NO. 7, PLEASE ANSWER QUESTION NO. 8. AFTER YOU HAVE ANSWERED QUESTION NO. 8, PLEASE PROCEED AND ANSWER QUESTIONS UNDER "C. ABITRON OPERATION."

8. What is the amount of the defendant's profits you find plaintiff is entitled to for infringement after termination on June 6, 2014, and before

Abitron Germany and Abitron Austria started doing business on September 1, 2014?

As to defendant Hetronic Germany \$ 2,788,037.00

As to defendant HCEE \$ 703,701.00

NOTE: YOU ARE NOT REQUIRED, IN ANSWERING THIS QUESTION (QUESTION NO. 8), TO ALLOCATE PROFITS FOR ABI AND/OR FUCHS, IF YOU HAVE ANSWERED "YES" AS TO EITHER DEFENDANT IN QUESTION NO. 1, QUESTION NO. 3, OR QUESTION NO. 5.

C. During Abitron Operation

1. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the HETRONIC® mark against the following defendant or defendants (after Abitron Germany and Abitron Austria started doing business on September 1, 2014)? (Circle "Yes" or "No" as to each defendant)

Abitron Germany	<u>Yes</u>	No
Arbitron Austria	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 2. ONLY ANSWER QUESTION NO. 2 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 1. AFTER YOU HAVE ANSWERED QUESTION NO. 2, PLEASE ANSWER QUESTION NO. 3.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE ANSWER QUESTION NO. 3.

2. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the HETRONIC® mark? (Circle "Yes" or "No" as to each defendant)

Abitron Germany	<u>Yes</u>	No
Abitron Austria	<u>Yes</u>	No

ABI Holding

☒ Yes

No

Albert Fuchs

☒ Yes

No

3. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the Product Marks as to the following defendant or defendants (after Abitron Germany and Abitron Austria started doing business on September 1, 2014)? (Circle "Yes" or "No" as to each defendant)

Abitron Germany

☒ Yes

No

Abitron Austria

☒ Yes

No

ABI Holding

☒ Yes

No

Albert Fuchs

☒ Yes

No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 4. ONLY ANSWER QUESTION NO. 4 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 3. AFTER YOU HAVE ANSWERED QUESTION NO. 4, PLEASE ANSWER QUESTION NO. 5.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE ANSWER QUESTION NO. 5.

4. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the Product Marks? (Circle "Yes" or "No" as to each defendant)

Abitron Germany

☒ Yes

No

Abitron Austria

☒ Yes

No

ABI Holding

☒ Yes

No

Albert Fuchs

☒ Yes

No

5. Has plaintiff proven by the greater weight of the evidence each essential element of its trademark infringement claim for the Trade Dress as to the following defendant or defendants (after Abitron Germany and Abitron Austria started doing business on September 1, 2014)? (Circle "Yes" or "No" as to each defendant)

Abitron Germany	<u>Yes</u>	No
Abitron Austria	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 6. ONLY ANSWER QUESTION NO. 6 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 5. AFTER YOU HAVE ANSWERED QUESTION NO. 6, PLEASE PROCEED TO THE INSTRUCTIONS FOR QUESTION NO. 7.

IF YOU HAVE ANSWERED "NO" TO ALL DEFENDANTS, PLEASE DO NOT ANSWER QUESTION NO. 6. PLEASE PROCEED TO THE INSTRUCTIONS FOR QUESTION NO. 7.

6. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants willfully or intentionally infringed the Trade Dress? (Circle "Yes" or "No" as to each defendant)

Abitron Germany	<u>Yes</u>	No
Abitron Austria	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

Instructions for Question 7.

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT ON QUESTION NO. 1, QUESTION NO. 3, OR QUESTION NO. 5, PLEASE ANSWER QUESTION NO. 7.

IF YOU HAVE ANSWERED "NO" AS TO ALL DEFENDANTS ON QUESTION NO. 1, QUESTION NO. 3, AND QUESTION NO. 5, PLEASE DO NOT ANSWER QUESTION NO. 7. PLEASE PROCEED TO "D. REVERSE PASSING OFF OR REVERSE PALMING OFF."

7. Has plaintiff proven by the greater weight of the evidence that it is entitled to any of defendant's profits that are the result of the infringement after Abitron Germany and Abitron Austria started doing business on September 1, 2014? (Check "Yes" or "No")

Yes ☒
 No ☐

IF YOU HAVE ANSWERED "YES" TO QUESTION NO. 7, PLEASE ANSWER QUESTION NO. 8. AFTER YOU HAVE ANSWERED QUESTION NO. 8, PLEASE PROCEED TO "D. REVERSE PASSING OFF OR REVERSE PALMING OFF."

8. What is the amount of the defendant's profits you find plaintiff is entitled to for infringement after Abitron Germany and Abitron Austria started doing business on September 1, 2014?

As to defendant Abitron Germany \$ 60,560,346.00

As to defendant Abitron Austria \$ 14,205,263.00

NOTE: YOU ARE NOT REQUIRED, IN ANSWERING THIS QUESTION (QUESTION NO. 8), TO ALLOCATE PROFITS FOR ABI AND/OR FUCHS, IF YOU HAVE ANSWERED "YES" AS TO EITHER DEFENDANT IN QUESTION NO. 1, QUESTION NO. 3, OR QUESTION NO. 5.

D. Reverse Passing Off or Reverse Palming Off

1. Has plaintiff proven by the greater weight of the evidence that the following defendant or defendants infringed plaintiff's HETRONIC® mark by reverse passing off or reverse palming off? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No
Abitron Germany	<u>Yes</u>	No
Abitron Austria	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, PLEASE ANSWER QUESTION NO. 2. ONLY ANSWER QUESTION NO. 2 AS TO THE DEFENDANT OR DEFENDANTS YOU HAVE ANSWERED "YES" IN QUESTION NO. 1. AFTER YOU HAVE ANSWERED QUESTION NO. 2, PLEASE PROCEED TO "E. CONTRIBUTORY INFRINGEMENT."

IF YOU HAVE ANSWERED "NO" AS TO ALL DEFENDANTS, PLEASE DO NOT ANSWER QUESTION NO. 2. PLEASE PROCEED TO "E. CONTRIBUTORY INFRINGEMENT."

2. Has plaintiff proven by the greater weight of the evidence that it is entitled to any of defendant's profits as a result of defendant's reverse passing off or reverse palming off? (Check "Yes" or "No")

Yes ✓

No _____

IF YOU HAVE ANSWERED "YES" TO QUESTION NO. 2, PLEASE ANSWER QUESTION NO. 3. AFTER YOU HAVE ANSWERED QUESTION NO. 3, PLEASE PROCEED TO "E. CONTRIBUTORY INFRINGEMENT."

IF YOU HAVE ANSWERED "NO" TO QUESTION NO. 2, PLEASE DO NOT ANSWER QUESTION NO. 3. PLEASE PROCEED TO "E. CONTRIBUTORY INFRINGEMENT."

3. What is the amount of the defendant's profits you find plaintiff is entitled to for the reverse passing off or reverse palming off infringement?

As to defendants Hetronic Germany and Abitron Germany
\$ 859,904.00.

As to defendants HCEE and Abitron Austria
\$ 51,888.00.

NOTE: YOU ARE NOT REQUIRED, IN ANSWERING THIS QUESTION (QUESTION NO. 3), TO ALLOCATE PROFITS FOR ABI AND/OR FUCHS, IF YOU HAVE ANSWERED "YES" AS TO EITHER DEFENDANT IN QUESTION NO. 1.

E. Contributory Infringement

1. Has plaintiff proven by the greater weight of the evidence each of the essential elements of its contributory infringement claim against the following defendant or defendants? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany

Yes

No

HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

PLEASE PROCEED TO PART 4.

Part 4: Plaintiff's Unfair Competition Claim

Has plaintiff proven by the greater weight of the evidence each of the essential elements of its unfair competition claim as to the following defendant or defendants? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
Abitron Germany	<u>Yes</u>	No
Abitron Austria	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ITS UNFAIR COMPETITION CLAIM.

IF YOU HAVE ANSWERED "NO" AS TO ALL DEFENDANTS, YOU HAVE RENDERED A VERDICT IN FAVOR OF DEFENDANTS ON PLAINTIFF'S UNFAIR COMPETITION CLAIM.

PLEASE PROCEED TO PART 5.

Part 5: Plaintiff's Tortious Interference with Contract Claim

Has plaintiff proven by the greater weight of the evidence each of the essential elements of its tortious interference with contract claim as to the following defendant or defendants? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
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HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ITS TORTIOUS INTERFERENCE WITH CONTRACT CLAIM.

IF YOU HAVE ANSWERED "NO" AS TO ALL DEFENDANTS, YOU HAVE RENDERED A VERDICT IN FAVOR OF DEFENDANTS ON PLAINTIFF'S TORTIOUS INTERFERENCE WITH CONTRACT CLAIM.

PLEASE PROCEED TO PART 6.

Part 6: Plaintiff's Claim of Aiding and Abetting Torsten Rempe's Breach of Fiduciary Duty

Has plaintiff proven by the greater weight of the evidence each essential element of its claim for aiding and abetting Torsten Rempe's breach of fiduciary duty as to the following defendant or defendants? (Circle "Yes" or "No" as to each defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ITS CLAIM FOR AIDING AND ABETTING TORSTEN REMPE'S BREACH OF FIDUCIARY DUTY.

IF YOU HAVE ANSWERED "NO" AS TO ALL DEFENDANTS, YOU HAVE RENDERED A VERDICT IN FAVOR OF DEFENDANTS ON PLAINTIFF'S CLAIM FOR AIDING AND ABETTING TORSTEN REMPE'S BREACH OF FIDUCIARY DUTY.

PLEASE PROCEED TO PART 7.

Part 7: Plaintiff's Civil Conspiracy Claim

Has plaintiff proven by the greater weight of the evidence each of the essential elements of its civil conspiracy claim as to the following defendant or defendants?

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
Abitron Germany	<u>Yes</u>	No
Abitron Austria	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

IF YOU HAVE ANSWERED "YES" AS TO ANY DEFENDANT, YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ITS CIVIL CONSPIRACY CLAIM.

IF YOU HAVE ANSWERED "NO" AS TO ALL DEFENDANTS, YOU HAVE RENDERED A VERDICT IN FAVOR OF DEFENDANTS ON PLAINTIFF'S CIVIL CONSPIRACY CLAIM.

IF YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ONE OR MORE OF ITS CLAIMS IN PART 4, PART 5, PART 6 OR PART 7, PLEASE PROCEED TO "PART 8: ACTUAL DAMAGES."

IF YOU HAVE RENDERED A VERDICT IN FAVOR OF ALL DEFENDANTS ON PLAINTIFF'S CLAIMS IN PART 4, PART 5, PART 6 AND PART 7, PLEASE PROCEED TO PART 10.

Part 8: Actual Damages

NOTE: PLAINTIFF SEEKS THE SAME DAMAGES FOR ALL CLAIMS IN PART 4 THROUGH PART 7. IF YOU HAVE RENDERED A VERDICT IN FAVOR OF PLAINTIFF ON ONE OR MORE OF ITS CLAIMS AGAINST ONE OR MORE OF THE DEFENDANTS IN PARTS 4 THROUGH 7, YOU MAY ONLY GRANT PLAINTIFF ONE AWARD OF ACTUAL DAMAGES AS SOUGHT BY PLAINTIFF.

Having found in favor of plaintiff on one or more of its claims for unfair competition, tortious interference with contract, aiding and abetting Torsten Rempe's breach of fiduciary duty, and civil conspiracy and against

one or more defendants, we award actual damages to plaintiff in the amount of \$ 5,310,832.00

PLEASE PROCEED TO PART 9.

Part 9: Punitive Damages

PLEASE ANSWER BOTH QUESTIONS FOR EACH CLAIM THAT YOU RENDERED A VERDICT IN FAVOR OF PLAINTIFF.

Unfair Competition Claim

1. Having found in favor of plaintiff on its unfair competition claim and having awarded actual damages to plaintiff, we find by clear and convincing evidence that the following defendant or defendants' actions were in reckless disregard of the rights of others: (Circle "Yes" or "No" as to each defendant – If you answered "No" in Part 4 to a defendant, do not answer this question for that defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
Abitron Germany	<u>Yes</u>	No
Abitron Austria	<u>Yes</u>	No
ABI Holding	<u>Yes</u>	No
Albert Fuchs	<u>Yes</u>	No

2. Having found in favor of plaintiff on its unfair competition claim and having awarded actual damages to plaintiff, we find by clear and convincing evidence that the following defendant or defendants' actions were taken intentionally and with malice towards others: (Circle "Yes" or "No" as to each defendant – If you answered "No" in Part 4 to a defendant, do not answer this question for that defendant)

Hetronic Germany	<u>Yes</u>	No
HCEE	<u>Yes</u>	No
Abitron Germany	<u>Yes</u>	No
Abitron Austria	<u>Yes</u>	No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

Tortious Interference with Contract Claim

1. Having found in favor of plaintiff on its tortious interference with contract claim and having awarded actual damages to plaintiff, we find by clear and convincing evidence that the following defendant or defendants' actions were in reckless disregard of the rights of others: (Circle "Yes" or "No" as to each defendant – If you answered "No" in Part 5 to a defendant, do not answer this question as to that defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

2. Having found in favor of plaintiff on its tortious interference with contract claim and having awarded actual damages to plaintiff, we find by clear and convincing evidence that the following defendant or defendants' actions were taken intentionally and with malice towards others: (Circle "Yes" or "No" as to each defendant – If you answered "No" in Part 5 to a defendant, do not answer this question for that defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

Claim of Aiding and Abetting Torsten Rempe's Breach of Fiduciary Duty

1. Having found in favor of plaintiff on its claim of aiding and abetting Torsten Rempe's breach of fiduciary duty and having awarded actual damages to plaintiff, we find by clear and convincing evidence that the following defendant or defendants' actions were in reckless disregard of the rights of others: (Circle "Yes" or "No" as to each defendant – If you answered "No" in Part 6 to a defendant, do not answer this question for that defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

2. Having found in favor of plaintiff on its claim of aiding and abetting Torsten Rempe's breach of fiduciary duty and having awarded actual damages to plaintiff, we find by clear and convincing evidence that the following defendant or defendants' actions were taken intentionally and with malice towards others: (Circle "Yes" or "No" as to each defendant – If you answered "No" in Part 6 to a defendant, do not answer this question for that defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

Civil Conspiracy Claim

1. Having found in favor of plaintiff on its civil conspiracy claim and having awarded actual damages to plaintiff, we find by clear and convincing evidence that the following defendant or defendants' actions were in reckless disregard of the rights of others: (Circle "Yes" or "No" as to each defendant – If you answered "No" in Part 7 to a defendant, do not answer this question for that defendant)

Hetronic Germany

Yes

No

HCEE

Yes

No

Abitron Germany

Yes

No

Abitron Austria

Yes

No

ABI Holding

Yes

No

Albert Fuchs

Yes

No

2. Having found in favor of plaintiff on its civil conspiracy claim and having awarded actual damages to plaintiff, we find by clear and convincing evidence that the following defendant or defendants' actions were taken intentionally and with malice towards others: (Circle "Yes" or "No" as to each defendant – If you answered "No" in Part 7 to a defendant, do not answer this question for that defendant)

Hetronic Germany	Yes	No
HCEE	Yes	No
Abitron Germany	Yes	No
Abitron Austria	Yes	No
ABI Holding	Yes	No
Albert Fuchs	Yes	No

PLEASE PROCEED TO PART 10.

Part 10: Plaintiff's Conversion Claim

1. Has plaintiff proven by the greater weight of the evidence each of the essential elements of its conversion claim as to the following defendant or defendants?

Hetronic Germany	Yes	No
HCEE	Yes	No
Abitron Germany	Yes	No
Abitron Austria	Yes	No
ABI Holding	Yes	No
Albert Fuchs	Yes	No

NOTE: PLAINTIFF IS NOT SEEKING ACTUAL DAMAGES FOR ITS CONVERSION CLAIM, BUT INSTEAD IS SEEKING THE RETURN OF ITS PROPERTY, IF YOU RENDER A VERDICT IN ITS FAVOR AGAINST ONE OR MORE OF THE DEFENDANTS.

YOU HAVE NOW COMPLETED YOUR DELIBERATIONS. PLEASE HAVE YOUR FOREPERSON DATE AND SIGN THIS VERDICT FORM.

DATE AND SIGNATURE

DATE: 3/2/2020 FOREPERSON: Jeri Clark

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